U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 07 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed a motion to reopen and reconsider the director's decision. The director dismissed the motion. The petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an attorney. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. Subsequent decisions have not disturbed the director's original decision.

On motion, the petitioner submits a statement and a map showing the geographic boundaries of United States courts of appeals and district courts.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's latest motion does not state any new facts or include any new evidence material to the petition. Therefore, the filing does not meet the regulatory requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). Furthermore, the petitioner has not shown that the AAO's decision was incorrect at the time of filing. Therefore, the filing does not meet the regulatory requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Accordingly, the AAO will dismiss the motion under the regulation at 8 C.F.R. § 103.5(a)(4).

Even if the petitioner's filing had met the requirements of a motion to reopen or a motion to reconsider, the petition would not be approvable. Apart from the procedural question of whether the latest filing qualifies as a motion to reopen or to reconsider, the merits of the petition do not warrant approval of the national interest waiver.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer –
>
> > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on August 3, 2009. On that form, the petitioner described himself as a "Self-employed Lawyer" who intends to "Practice international trade law (public aspect) specializing in 'Trade Adjustment Assistance' law, policy and practice." In a separate statement, the petitioner elaborated on this description:

> President Obama signed the Trade and Globalization Adjustment Assistance Act of 2009 on February 17, 2009. . . .
>
> This new legislation has changed/improved the Trade Adjustment Assistance (TAA) Program . . . [u]nder [which] . . . U.S. Workers, Firms, Communities and Farmers may be eligible for a variety of TAA services and benefits if they were laid off/lost job as a result of increased foreign imports (foreign trade) or if their companies shifted production out of the United States to certain foreign countries. . . .
>
> U.S. workers, firms, communities and farmers . . . affected by increased import or shift in production to China are now . . . able to file a petition [with] the U.S. Department of Labor for TAA benefits and services. The decision of the U.S. Department of Labor on a TAA petition is appealable to the U.S. Court of International Trade, and thereafter the U.S. Court of Appeals for the Federal Circuit.
>
> . . . More and more affected U.S. workers, firms, communities and farmers will file petitions for TAA benefits. The increasing needs for counsels (lawyers) to advise and represent clients in the process are also growing.

The above assertions address the intrinsic merit of the petitioner's intended occupation. With respect to national scope, the petitioner (describing himself in the third person) stated:

> [The petitioner] seeks employment permanently as a lawyer advising and representing clients (U.S. workers, firms, communities and farmers throughout the United States, who are negatively affected by foreign trade) to prepare and file "Trade Adjustment Assistance" Petitions or Appeal Cases to the U.S. Department of Labor, the U.S. Court of International Trade, and the U.S. Court of Appeals for the Federal Circuit.

The petitioner observed that administrative or legal decisions arising from the appeals process have the potential to form nationally binding precedent.

The above information concerns the intrinsic merit and national scope of TAA Program law. Because no blanket waiver exists for attorneys who specialize in such law, the petitioner must establish that his own qualifications meet the third prong of the *NYSDOT* national interest test.

The petitioner observes that he holds an S.J.D. degree, "the terminal/most advanced degree in the field of Law in the United States," entitling him to use the honorific title "Dr." before his name. The petitioner cited statistics showing that "only 93 terminal (S.J.D.) degrees were awarded per year in the whole United States from 1970-2006," and claimed: "The S.J.D. degree is rarely awarded and only granted to extremely limited talents with outstanding achievement and intellectual and academic excellence." That conclusion relies on the unproven assumption that the number of degrees awarded in a particular field is directly proportional to the difficulty of obtaining that degree, and the level of merit required to earn that degree.

The petitioner also asserted that he achieved his law degrees at a relatively young age (he was 27 years old when he filed the petition). This fact may indeed speak well of the petitioner's academic aptitude, and bode well for a future law career, but it is not, itself, an influential achievement in the field of law.

Under the plain wording of section 203(b)(2)(A) of the Act, a member of the professions holding an advanced degree (such as a lawyer holding an S.J.D. degree) is normally subject to the job offer requirement. The petitioner's advanced degree itself, therefore, cannot be a factor in granting a waiver of that requirement. Likewise, the petitioner's assertion that very few attorneys hold such a degree does not establish eligibility. Holding a degree that most in the occupation do not hold may contribute to a finding of exceptional ability under the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A), but an alien of exceptional ability, like a member of the professions holding an advanced degree, is presumptively subject to the statutory job offer requirement.

Under *NYSDOT*, it cannot suffice for the petitioner to be well qualified to practice a useful profession. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be

entirely speculative. *NYSDOT*, 22 I&N Dec. 219. USCIS does not seek a quantified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest. *Id.* at 219, n.6.

The petitioner asserted that he will be self-employed, and therefore no employer can seek labor certification on his behalf. USCIS acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n.5.

The petitioner claimed that his "outstanding and unique intellectual and academic excellence has been solidly proved by his unusual and significant past demonstrable achievement and record." The petitioner did not describe any past record or prior experience at a TAA attorney. Instead, the petitioner asserted that he "is taking substantial steps in establishing his own legal practice," having "formed/incorporated a professional service corporation." The petitioner, therefore, did not establish any record of specific prior achievements in his intended field. Instead, he asserted that his S.J.D. degree has placed him in a good position to begin a legal career.

The petitioner stated: "At the age of 26, [the petitioner] was invited by the American Bar Association (ABA) to be an oral argument Judge for the [redacted] which is one of the largest moot court competitions in the United States." To support this claim, the petitioner submitted a printout of an electronic mail message from the ABA that reads, in part:

> [redacted]
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> . . . I would like to invite you to participate as an oral argument judge for the [redacted] . . .
>
> With 190 teams competing, the [redacted] is one of the largest moot court competitions in the country. Teams from law schools in 15 states are preparing to compete in the [redacted]
>
> We need approximately 80 judges for the regional competition. If you have any colleagues who may be interested in participating as a volunteer judge, please forward this message to them. Judging assignments will be made on a first-come, first-served basis.

The petitioner did not show what criteria the ABA used to select judges for the competition, or how many invitations the ABA sent out. The request to forward the invitation to other attorneys, without first clearing them through the ABA, does not suggest that the invitation reflected any sort of recognition or exclusive honor. Therefore, there is no basis to conclude that the invitation from the ABA is strong evidence in the petitioner's favor.

The petitioner stated: "At the age of 27, [the petitioner] was invited by the President of the United Nations General Assembly to represent 400,000 American lawyers, law graduates and law students at the 'United Nations Conference on the World Financial and Economic Crisis and its Impact on Development.'" The letter of invitation appears to be a "form" letter; it begins with the generic salutation "Dear Sir/Madam," and states: "travel arrangements and accommodation in [redacted] are your own responsibility," although the petitioner resided in [redacted] and therefore would have needed no travel arrangements or accommodation. The invitation letter invited the petitioner to "participate" in the conference, but did not state that the petitioner would "represent 400,000 American lawyers, law graduates and law students" in any official capacity. As with the ABA letter, the record does not show how many people received this invitation, or how they were chosen to receive it.

The petitioner did not claim any experience working with TAA cases. Rather, he expressed confidence that, given his background, he was likely to excel in that branch of law.

The petitioner then submitted a number of supplemental submissions, some consisting of general background information and others further documenting the petitioner's credentials as an attorney.

On January 20, 2010, the director issued a request for evidence, stating: "Please submit evidence to establish that you have a past record of specific prior achievement with some degree of influence on your field." In response, the petitioner stated that he is not "a scientific researcher who publishes research outcomes in journals," and therefore the requirement of "specific prior achievement with some degree of influence on the field as a whole may not be completely applicable to the special situations in this case." The *NYSDOT* guidelines are not specific to scientific researchers. The AAO notes that the beneficiary in the original *NYSDOT* case was an engineer, not a researcher. In the present matter, the petitioner stated that an attorney's work on a TAA case could result in a binding precedent that would apply to future TAA proceedings. In this way, the petitioner himself identified a way in which a TAA attorney could influence the field. It remains that *NYSDOT* is a binding precedent decision affecting all national interest waiver petitions,[1] and the petitioner cannot exempt himself from key *NYSDOT* provisions.

The petitioner repeated the assertion that he earned his "rarely awarded" S.J.D. degree at age 27, and stated: "Balancing the age of the beneficiary and his accomplishments, any reasonable person with common sense would have to agree that it does be [*sic*] a reasonable projection of the beneficiary's prospective substantially great benefits to the United States, if the beneficiary continues serving in

[1] Section 203(b)(2)(B)(ii) of the Act provides an exception for certain physicians, which does not apply here.

the United States as an attorney." The petitioner has not provided adequate support for this contention. It cannot suffice for him to assert that "common sense" compels the conclusion.

The petitioner also stated that his familiarity with Chinese language and culture would give him an advantage when dealing with TAA issues involving China. National background is not an influential achievement. Also, it is relevant to repeat here that the petitioner claimed no experience handling TAA cases. The assertion that he would be especially adept at handling them, therefore, amounts to unsupported speculation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Without evidence regarding the petitioner's past performance as a lawyer (rather than as a law student or as a representative of a bar association), there is little foundation for the petitioner's expectations of future performance as a lawyer.

The director denied the petition on March 11, 2010, stating that the petitioner's general assertions about his youth and his subject matter expertise do not establish that holding the petitioner to the job offer requirement would adversely affect the national interest. On motion from that decision, the petitioner contended that the director "inappropriately interpreted and applied [*NYSDOT*] . . . to the special and different facts of this specific case." The petitioner repeated the assertion that labor certification was not an option because he is self-employed, and contended that *NYSDOT* applies only where labor certification is possible. As quoted previously, *NYSDOT* contains specific language addressing self-employed aliens who cannot obtain labor certification. By statute, the threshold for the waiver is the national interest, not self-employment or the unavailability of labor certification.

The petitioner stated that, as a sworn officer of the court, "it is the beneficiary's right to freely choose employment, including being self-employed." An attorney's right to self-employment does not imply a right to immigration benefits. Congress specified the means by which professionals with advanced degrees (such as attorneys) can immigrate to the United States, and the petitioner can only receive employment-based immigration benefits within the statutory framework. The petitioner's intention to establish his own practice does not, as the petitioner claims, compel the government to grant him permanent immigration benefits under the equal protection clause of the Constitution.

The petitioner submitted documentation regarding activities he undertook after the petition's August 3, 2009 filing date, including further events at the United Nations and judging another moot court competition. In the [redacted] the petitioner announced his intention to publish his doctoral thesis.

These new exhibits added little of weight to the record, being largely similar to previously submitted materials. The materials showed that the petitioner continued to be active in local bar activities, but did not establish what impact the petitioner's work has had, or will have, on TAA law (which was the original premise for the waiver application). Furthermore, an applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request.

8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The petitioner's activities in late 2009 and early 2010 cannot retroactively establish eligibility as of August 2009 when he filed the petition.

In June 2010, the petitioner submitted additional materials in support of the motion. The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(vii) permits the petitioner to supplement a previously filed appeal, with a showing of good cause, but there is no provision to permit the petitioner to supplement a previously filed motion to reopen or reconsider. Therefore, the director was under no obligation to consider the materials in the petitioner's June 2010 supplemental submission.

The June 2010 submission documented events that took place not only after the petition's filing date, but after the filing date of the motion. Three letters, all dated late May 2010, confirmed the petitioner's appointment to various positions within the ABA Section of International Law. A [redacted] publication of an article by the petitioner in the then-upcoming [redacted]

The director dismissed the petitioner's motion on July 7, 2010, stating that the petitioner's attempt to "bypass" *NYSDOT* did not meet the requirements of a motion to reopen or reconsider.

On appeal from that decision, the petitioner repeated the assertion that the director's decision deprived him of "[t]he constitutional right of being a self-employed lawyer." The petitioner also noted that 27% of attorneys are self-employed. The petitioner failed to establish that an attorney's self-employment generates a Constitutional entitlement to immigration benefits. Under the USCIS regulation at 8 C.F.R. § 103.3(c), precedent decisions such as *NYSDOT* are binding on all USCIS employees, including the director and the AAO.

The petitioner repeated the incorrect assertion that *NYSDOT* is "only applicable to a scientific researcher." As noted previously, the beneficiary in *NYSDOT* was not a scientific researcher, and nothing in the language of that decision limited its applicability to scientific researchers. As a precedent decision, *NYSDOT* is binding on all national interest waiver petitions except for certain physicians covered by different statutory terms.

The petitioner asserted that the director "applied a somewhat higher standard of proof" instead of the preponderance of evidence standard, and "mismatch[ed] facts in the precedent decision to the unique and distinguishable facts of this case." A Department of Homeland Security precedent decision describes the preponderance of evidence standard of proof:

> The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. . . . Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and

> credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.
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> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof.

Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). In this instance, the petitioner has not submitted any evidence of achievements or experience as an attorney handling TAA cases. Instead, he has maintained that, because he earned an S.J.D. degree at a young age, "common sense" dictates that he will prove to be a superior attorney. *Chawathe* does not state or imply that the petitioner's own expectations about his future career are sufficient to establish by a preponderance of evidence that the petitioner qualifies for the benefit sought.

The petitioner later supplemented the appeal with further materials that post-dated the filing of the petition, such as an article that the petitioner wrote, entitled [redacted]. The petitioner did not explain the relevance of this 2010 article to the TAA Program upon which he had first based the waiver request.

The AAO dismissed the petitioner's appeal on February 17, 2012. That decision read, in part:

> The appeal under consideration by the AAO is not an appeal of the director's initial decision on the merits of the petition. The petitioner did not appeal that decision, but chose to file a motion instead. The director, in turn, dismissed that motion. On appeal, therefore, is not the denial of the petition but rather the dismissal of the motion. Before the AAO can give any consideration to the merits of the underlying petition, the petitioner must first establish that the director erred by dismissing the motion.
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> The director's dismissal notice quoted extensively from the regulations at 8 C.F.R. § 103.5(a), including the requirements of motions to reopen and to reconsider. The director's July 7, 2010 decision included a brief discussion of the *NYSDOT* precedent decision, but the director did not reopen the petition and then re-deny it on the merits. Rather, the director dismissed the motion for failure to meet the requirements of a motion. On appeal, the petitioner does not even address, much less rebut, the director's finding that the motion failed to meet applicable requirements. Instead, the petitioner offers multiple assertions to the effect that the director should have approved the petition in the first place.
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> The petitioner cannot overcome the dismissal of his motion by filing a new appeal that seeks readjudication of the underlying petition, as though the motion and its dismissal never happened. The petitioner's opportunity to dispute the original decision was the

> 30-day period immediately following the service of that decision. *See* 8 C.F.R. §§ 103.3(a)(2)(i) and 103.5(a)(1)(i). During that period, the petitioner chose to file a motion instead of an appeal, and his April 2010 filing was therefore subject to the requirements of a motion under the regulations quoted previously. The dismissal of the motion did not reset the clock for the petitioner to appeal the original decision. When the petitioner filed his appeal in August 2010, he could only properly appeal the director's dismissal notice of July 2010, not the denial notice of March 2010.
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> Issues not briefed on appeal by a pro se litigant are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir.2008) (per curiam). When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005). In this instance, the petitioner, on appeal, did not contest or address the director's finding that the filing failed to meet the requirements of a motion. The petitioner has, therefore, abandoned that issue.

In his latest motion, the petitioner asserts that "the petitioner, on appeal, has in fact clearly contested and rebutted the service center director's findings that the motion failed to meet applicable requirements." Specifically, the petitioner observes that, on appeal, he repeatedly disputed the director's reliance on *NYSDOT*. The director, however, did not dismiss the motion because of *NYSDOT*. Rather, the director stated that the petitioner had failed to meet the regulatory requirements of a motion as set forth in 8 C.F.R. §§ 103.5(a)(2) and (3). The petitioner's attempts to distinguish the present proceeding from *NYSDOT* are immaterial to the director's finding that the filing failed to meet the requirements of a motion. The dismissal rested on procedural grounds. The petitioner's issues with *NYSDOT* are merits issues, rather than procedural ones.

The petitioner asserts that he did raise a procedural issue, by stating that the director held the petitioner to a higher standard of proof than the preponderance of evidence. For a filing to qualify as a motion to reconsider, however, the petitioner cannot simply raise procedural concerns. As stated above, under the USCIS regulation at 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The petitioner has not met this requirement. Instead, the petitioner has asserted that "[a]ny reasonable person with common sense would agree" that he qualifies for the waiver. Such a claim does not meet the preponderance of evidence standard, and it does not establish that the director's decision was incorrect based on the evidence of record at the time of the initial decision. As stated previously, the petitioner's unsupported claims do not meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165; *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Throughout this proceeding, the petitioner's key assertions have been: (1) his professional credentials self-evidently establish that he is a superior attorney who will, consequently, benefit the United States; (2) *NYSDOT* only applies to research scientists, and therefore does not pertain to

attorneys; and (3) the equal protection clause of the Constitution permits attorneys to be self-employed, and therefore the director cannot deny the petitioner immigration benefits without interfering with the petitioner's constitutional rights. For reasons explained above, none of these contentions withstands scrutiny. The petitioner has not established eligibility for the national interest waiver, and the director therefore properly denied the petition. On the basis of the evidence submitted, the petitioner has not established that a waiver of the job offer requirement will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.